

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERALD VILLANUEVA,)	CIVIL NO. 05-00460 JMS-BMK
)	
Petitioner,)	ORDER DENYING CERTIFICATE
)	OF APPEALABILITY
vs.)	
)	
STATE OF HAWAII,)	
)	
Respondent.)	
_____)	

ORDER DENYING CERTIFICATE OF APPEALABILITY

Petitioner Gerald Villanueva appeals the denial of his amended petition for writ of habeas corpus under 28 U.S.C. § 2254 and seeks a certificate of appealability. This court denied Villanueva's amended petition on its merits on December 15, 2005. Judgment was entered on January 9, 2006.¹ For the following reasons the Certificate of Appealability is DENIED.

¹ On January 17, 2006, the court issued an Order amending the order denying Villanueva's amended petition to delete reference to 28 U.S.C. § 1915(g).

DISCUSSION

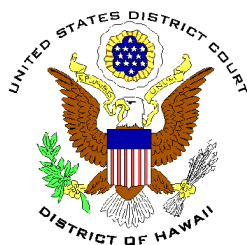
A petitioner must obtain a certificate of appealability (“COA”) to appeal a final order denying a habeas corpus petition. 28 U.S.C. § 2253(c)(1)(B). The district court should treat a timely notice of appeal or other similar filing as a request for a COA and rule on it prior to processing the appeal. *See* Fed. R. App. P. 22(b). The court may issue a COA only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When, as here, a petition is denied on the merits of the claim, the petitioner is required to show that reasonable jurists could debate whether the issues should have been resolved differently or are “adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n.4 (1983)).

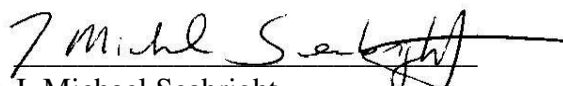
Villanueva states that he was born in the Territory of Hawaii, prior to Hawaii becoming a state. The basis for Villanueva’s amended petition is that he is not a citizen of the State of Hawaii, but a citizen of the Territory of Hawaii. Villanueva argues that, as a citizen of the Territory of Hawaii, he is not subject to the laws or jurisdiction of the State of Hawaii, and thus his conviction and incarceration are illegal. This court found that Villanueva’s contention was without merit as a matter of law and denied the amended petition for failure to

state a claim. This court finds that reasonable jurists could not debate that Villanueva has not made a substantial showing of the denial of a constitutional right. The Certificate of Appealability is DENIED.

IT IS SO ORDERED.

Dated: Honolulu, Hawaii, February 7, 2006.




J. Michael Seabright
United States District Judge

Villanueva v. Hawaii, Civil No. 05-00460 JMS-BMK; Order Denying Certificate of Appealability